



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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No. 10 Dispur, Saturday, 4th January, 2025, 14th Pausa, 1946 (S. E.)

GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT

NOTIFICATION

The 4th January, 2025

No. LLE 36/2024/02.- The following decision of the Speaker, Assam Legislative Assembly given under Paragraph 6(1) of the Tenth Schedule to the Constitution of India is hereby notified and published:

**DECISION OF THE SPEAKER, ASSAM LEGISLATIVE ASSEMBLY
UNDER PARAGRAPH 6 (1) OF THE TENTH SCHEDULE TO THE
CONSTITUTION OF INDIA**

ALA Case No.ALA/DQC/15/2024/03

Shri Rakibul Hussain, MP

.....**Petitioner**

-Versus-

Shri Sherman Ali, MLA, No. 45 Baghbar LAC

.....**Respondent**

Principle of Natural Justice being followed :-

From the record it appears that copy of the petition filed by the petitioner along with its annexures including pendrives has been furnished to the respondent. The respondent has filed their reply. The copy of the reply is also been furnished to the petitioner. On 25.10.2024

the matter was posted for hearing both the sides. The matter was heard at length giving reasonable opportunities to both the sides and the case has been fixed for order.

Maintainability :-

The respondent in his reply raised the question of maintainability of the petition filed by the petitioner on following grounds-

- a. That the petition preferred by the petitioner is not in accordance with 1986 Rules.
- b. The petitioner not being the member of the Assam Legislative Assembly does not have the locus standi to file the petition.

I have perused the petition supported by an affidavit as well as verification. I have also gone through the objection of the respondent. I have also applied my mind to the Rules of 1986, 10th Schedule of the Constitution of India as well as Article 191 of the Constitution of India. According to the aforesaid provisions the ground taken by the respondent with regard to the locus standi of the petitioner to file then petition under 10th Schedule of the Constitution of India have no legs to stand in view of the fact that reading the Rules of 1986, Article 191 and the 10th Schedule of the Constitution of India any person who is a citizen of India can prefer a petition for invoking the 10th Schedule of the Constitution of India and as such I find no merit on the aforesaid objection placed by the respondent and the same is hereby rejected.

So far the plea taken by the respondent that the petition has not been preferred as per the Rules of 1986 is concerned, I have gone through the petition as well as the affidavit and verification submitted by the petitioner. I have also perused the record which speaks in volume that the petition submitted by the petitioner is as per Rules of 1986 and I don't see any reason to dismiss the petition on technicalities and as such plea of the respondent that the petition has not been preferred as per Rules of 1986 is hereby rejected.

The allegations made by the petitioner in his petition :-

- a. The petition has been preferred for disqualifying the respondent under the 10th Schedule of the Constitution of India read with the Members of the Assam Legislative Assembly (Disqualification on the ground of Defection) Rules of 1986. Petitioner of the instant case in paragraph 1 and paragraph 2 has stated that he is a citizen of India having his permanent address as provided by him. Further in Paragraph 2 he has stated that he was elected as a member of Assam Legislative Assembly from Samaguri Legislative Assembly Constituency in the year 2021 on the ticket of Indian National Congress. He further stated that he is the Deputy Leader of the Indian National Congress in Assam Legislative Assembly. Further he has stated that the respondent was also elected as the member of Assam Legislative Assembly from Baghbar Constituency in the year 2021 from the ticket of Indian National Congress.
- b. The petitioner in Paragraph 3 and 4 stated about the respondent making some public/press statement in social media post against the Indian National Congress. Further the petitioner stated that the respondent has been suspended from the Indian National Congress due to indiscipline and anti-party activities but **he admits in his petition in paragraph 4 that the respondent has neither voluntarily resigned nor been expelled by Indian National Congress.** In paragraph 5, the petitioner alleged that the respondent clearly demonstrated that he has voluntarily given up the membership of Indian National Congress.
- c. The petitioner in paragraph 6 quoted a paragraph from a judgment of *Ravi S. Nayak -vs- Union of India* and the copy of the judgment is annexed with the petition. Further the petitioner in paragraph 7 also relies on a judgment of the Apex Court reported in 1996 (2)

SCC 353. He also annexed a copy of the aforesaid judgment. I have perused the aforesaid judgment.

- d. The petitioner also in paragraph 8 (I) alleged about an interview given by the respondent on 8/2/24 wherein it has been alleged that the respondent has criticised the Indian National Congress. The contents of the aforesaid interview as well as some Facebook posts were made a part of the petition has also been provided in pendrive.
- e. The petitioner also in paragraph 8 (II) alleged about the respondent attending an Iftar mehfil on 19/3/24. Further the petitioner referred in paragraph 8 (III) alleging about attending an Iftar party by AIUDF candidate of Nagaon on 31/3/24. Further in paragraph 8 (IV) he alleged about the respondent attending a public meeting and criticizing the leadership of Indian National Congress. He further alleged that the respondent appealed to the public to cast vote against Indian National Congress and to cast vote in favour of rival political party. Further in paragraph 8 V he alleged that the respondent on 29/4/24 made media statements in some portal news to vote against the Indian National Congress candidate. Similar allegations has also been made in paragraph 8 VI. He also mentioned about some links in facebook in the aforesaid paragraphs.
- f. In paragraph 9 of the said petition the petitioner alleged that the links mentioned by him in the petition are genuine. Further it is a request made by the petitioner to ascertain the genuineness of the documents submitted by him.
- g. In paragraph 11, 12 and 13 the petitioner referred to judgments of the Apex Court.

h. That the petitioner in paragraphs 14, 15, 16, 17 and 18 submitted that the facts of the case, material available on record and laws laid down by Hon'ble Apex Court it is crystal clear that the respondent has voluntarily given up his membership of Indian National Congress by his repeated conduct, action and speeches. According to him the respondent incurred disqualification from being a Member of Assam Legislative Assembly under the 10th Schedule of the Constitution of India. Further it has been stated in his petition that the respondent despite voluntarily giving up his membership of Indian National Congress by his repeated conduct, action and speeches cannot be permitted to get away with it without facing the consequences. According to him the respondent is not entitled to continue as a member of Assam Legislative Assembly even for a single day as he has incurred disqualification by voluntarily giving up the membership of Indian National Congress through his repeated conduct. According to the petitioner he is sitting in the assembly, participating, voting and passing budget framing laws even though he has no right to do so. According to the petitioner the presence of the respondent after incurring disqualification, taints all the assembly procedure and such an infraction of the Constitution cannot be permitted even for a day. Further the petitioner states that the petitioner came to know that the Leader of Opposition, Assam Legislative Assembly filed a petition on 26.04.2022 before the Hon'ble Speaker of Assam Legislative Assembly for disqualification of the respondent. Further the petitioner submits that the cause of action of the petitioner's petition arose on 08.02.2024 and on subsequent dates when the respondent gave an interview and public statements diminishing the image of Indian National Congress and its leadership which

amount to voluntarily giving up the membership of Indian National Congress and according to him the same is shared by the respondent in his verified facebook page. The petitioner relied on a judgment of Apex Court dated 17.01.2013.

- i. The petitioner in paragraph 19 to 22 have submitted that the cause of action of his petition and the petition dated 26.04.2022 is not the same and identical. According to him the respondent by his repeated conduct leads to voluntarily giving up membership of Indian National Congress incurring disqualification under paragraph 2(1)(b) of the 10th Schedule of the Constitution of India. According to him there is no alternative, adequate, efficacious remedy other than preferring the instant petition under the 10th Schedule of the Constitution of India read with the Members of the Assam Legislative Assembly (Disqualification on the ground of Defection) Rules of 1986.

The response of the respondent :-

- a. The respondent has filed a reply dated 10.07.2024 which is part of the record. The respondent in its written reply to the show cause notice issued by the Secretary of the Assam Legislative Assembly dated 29/5/24 filed a reply consisting of 17 pages. The respondent raised preliminary contentions with regard to the maintainability of the petition. The respondent referred to the violation of the provision Rule 6 (5) of the Rules of 1986. He quoted Rule 6 as well as Rule 7 of the Rules of 1986 in his reply. In his reply he alleged that the copy of the annexures were not supplied to him and he further alleges that Rule 6 (5) (b) of the Rules of 1986 has been violated.

- b. On 10/07/2024 the respondent filed his reply. Further in paragraph B of the respondent's reply the respondent alleged that a similar petition was filed by the leader of the CLP namely Debabrata Saikia and is pending before the Speaker and he stated that the allegations are identical. The respondent in his reply also stated that he has not received the video footage of the news channel and facebook post.
- c. The respondent has also provided paragraph wise reply to the petition filed by the petitioner. In paragraph 3 of the said petition the respondent has raised the question that the petitioner has resigned from the Assam Legislative Assembly, he is an elected member of the Dhubri Lok Sabha Constituency and is no more a Member of the Assam Legislative Assembly. The respondent also denies all the statements wherein allegations have been made by the petitioner against him. Further he also stated in his reply that the judgment relied by the petitioner is not applicable in his case. He further denies that he has given up the membership of Indian National Congress. He further alleged that parallel proceeding is not maintainable and he prays for dismissal of the proceeding and the aforesaid petition is filed by the respondent supported by verification and affidavit.

Article 191 of the Constitution of India :-

A member of the Legislative Assembly or a Council of State can be disqualified on the grounds mentioned in Article 191 (1) (a) to (e).

10th Schedule of the Constitution of India:-

A person can be disqualified from being a member of Legislative Assembly or Legislative Council of a State under the

10th Schedule of the Constitution of India. Further a person can be disqualified under the 10th Schedule of the Constitution of India under paragraph 2 (1)(a) or 2 (1)(b). A person can be disqualified from the membership of Legislative Assembly of a State or Council of a state or either House of the Parliament under paragraph 2(1)(a) and 2(1)(b) of the 10th Schedule of the Constitution of India. There are exceptions been provided under paragraph 4 and 5. Under paragraph 2(1)(a) if a member of Legislative Assembly who have won the election on the ticket of a political party has voluntarily given up the membership of such political party then he is subjected to disqualification under paragraph 2(1)(a). Under paragraph 2(1)(b) if a person is elected on the ticket of a political party votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in his behalf, without obtaining, in either case the prior permission of such political parties, person or authority or such voting or abstention has not been condoned by such political parties, person or authority within 15 days from the date of such voting or abstention shall be subject to disqualification. An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election. A nominated member of a House shall be disqualified from being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,— (i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party; (ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

The case in hand :-

On perusal of the petition filed by the petitioner appears that the petitioner has preferred a petition for disqualifying the respondent as provided in paragraph 2(1)(a) i.e. that he has voluntarily given up the membership of such political party.

What amounts to voluntarily giving up the membership of a political party :-

A person elected on the ticket of a political party by his actions, conduct or speeches if conduct himself in such a manner that he voluntarily gives up the membership of the political party on whose ticket he has won the election shall be subjected to disqualification under paragraph 2(1)(a) of 10th Schedule of the Constitution of India.

Right to freedom of speech and expression guaranteed under Article 19 (1)(a) of the Constitution of India :-

Right to freedom of speech and expression is a fundamental right guaranteed to each citizen of India. The Right to freedom of speech and expression and the Right to dissent is also a part of Article 19(1)(a) of the Constitution of India. Right to dissent is a facet under the Right to freedom of speech and expression which is also guaranteed under Article 19 (1)(a) of the Constitution of India. The word dissent means having or expressing opinions that are different from those that are officially accepted. Right to freedom of speech and expression is considered as an essential fundamental right under the democratic system of government. Article 19 (1) (a) of the Constitution of India recognise this as fundamental. The fundamental right to freedom of speech and expression is nothing but negative duty imposed upon the State under Article 19(1)(a) of the Constitution of India. Liberty and freedom are defining values of our Constitution and they should have the freedom guaranteed by the Constitution. Right to freedom of speech and expression and Right to dissent is part and parcel of Article 19 (1)(a) of the Constitution of India.

In India being a democratic nation right to dissent and expressing ones view to any decision of the Government or otherwise any action taken by the Government or policy of any political party would cover under right to freedom of speech and expression guaranteed under the Constitution of India. It would not amount to disqualification under paragraph 2(1) (a) of the 10th Schedule of the Constitution of India.

The judgments cited by the petitioner :-

I have perused the Hon'ble Supreme Court judgment reported on February 9, 1994 submitted by the petitioner. The aforesaid case was between Ravi S. Nayak and Sanjay Bandekar and Ors.

In the aforesaid case Hon'ble Supreme Court discussed paragraph 2 (1) (a) of the 10th Schedule of the Constitution of India. In the aforesaid case it is the case of the petitioner that both the persons disqualified by the Speaker voluntarily accompanied Dr. Luis Proto Barbosa to the Governor and has told the Governor that he does not support the MGP any longer. He had also made it known to the public that he has voluntarily resigned from the membership of the MGP.

The replies given by the disqualified members were also been discussed in the aforesaid judgment wherein they have denied that they have voluntarily resigned from the MGP and their case is that they have not resigned from the membership and the petitioner could not bring any document to show that they have voluntarily given up the membership of MGP.

In the aforesaid judgment the order of the speaker was also been reflected. In the aforesaid order it reflects the copies of several newspapers showing photos of the two MLAs with Congress (I) MLA and Dr. Barbosa when they met Governor with Dr. Wilfred D'Souza who had taken them to show that he has support of 20 MLAs. Furthermore, the two MLAs who have been disqualified never denied the fact that they have went to the Governor against the MGP. In the aforesaid circumstances the Speaker came to a finding that he is satisfied by the conduct of

the 2 MLAs, their actions and speeches that they have voluntarily given up the membership of MGP.

I have also applied my mind to the rest of the judgment wherein paragraph 2 (1) (a) of the 10th Schedule of the Constitution of India has been discussed. I have also applied my mind to the applicability of disqualification ground as provided in paragraph 4 of the 10th Schedule of the Constitution.

The facts of the aforesaid case is not applicable in the instant case in as much as the allegations leveled by the petitioner against the respondent is on the basis of documents provided in a pendrive which are not free from tampering. Same appears to be recorded from news TV channel and the same is subject to editing. Furthermore the original raw footage is never been produced and neither any certificate under Section 65 B of the Evidence Act has been furnished. The statement made by the petitioner has been specifically and categorically denied by the answering respondent.

The aforesaid judgment relied by the petitioner is altogether in a different footing and the materials made available before me and the facts of the aforesaid case which is appreciated by the Hon'ble Apex Court is altogether different and it is not applicable to the facts and documents made available by the petitioner before me.

The next judgment relied by the petitioner is between Azhagu Thirunavukkarasu and the Hon'ble Speaker, Tamil Nadu. In the aforesaid judgment the Hon'ble Supreme Court upheld the judgment and order of the Speaker disqualifying the petitioner. In the aforesaid judgment the admitted facts with regard to the disqualification were discussed in the aforesaid judgment under the heading 14 A, B, C and D. In the aforesaid case the person

disqualified did not deny the contents of the allegations leveled against him. The admitted fact of the aforesaid case was that he has joined another political party and as such he was being disqualified from the membership of Tamil Nadu Legislative Assembly under the paragraph 2(1)(a) of the 10th Schedule of the Constitution of India. The aforesaid facts of the case and the aforesaid facts of the instant case is totally different and by no means helps the petitioner.

The petitioner relied on another judgment being Civil Appeal No. 469/2013. There are also connected cases decided by the Hon'ble Apex Court in the aforesaid judgment. The aforesaid judgment decided that for invoking the power of the Speaker under paragraph 2 (1) (a) of the 10th Schedule of the Constitution of India whether the said application can be filed came to a finding that not only a member of the legislative assembly can prefer a disqualification petition under the 10th Schedule of the Constitution of India but any person interested can prefer a petition for disqualification of a member of a Legislative Assembly. The aforesaid judgment negate the ground taken by the respondent that the petitioner who preferred the petition at a time when the petitioner was the member of the Assam Legislative Assembly and now he is not a member of the Assam Legislative Assembly and is now a member of the Lok Sabha and the petition is not maintainable. The aforesaid ground taken by the respondent has no force in view of the aforesaid Supreme Court judgment where it has been stated that any person interested can prefer a petition for disqualification under the anti-defection law. In the aforesaid case 4 member of a political party were elected on a ticket provided by NCP in Orissa Legislative Assembly got elected but

after election all the 4 elected member joined the BJD which is a ruling party in Orissa. Under the aforesaid facts and circumstances the Supreme Court held that by their conduct and joining another party after winning election by the ticket of NCP clearly stood disqualified under the 10th Schedule of the Constitution of India. The aforesaid facts and the facts of the instant case of the petitioner are totally different and not applicable.

The petitioner also relied on a judgment of the Hon'ble Supreme Court arising out of SLP (C) no. 54/2012 between Speaker of Haryana Vidhan Sabha and Kuldeep Bishnoi and Ors. The fact of the aforesaid case with regard to merger and with regard to disqualification petition being preferred before the Speaker and in the aforesaid case Hon'ble Supreme Court discussed various aspects of the 10th Schedule of the Constitution of India and ultimately directed the Hon'ble Speaker to dispose of the disqualification petition pending before him within a period of 3 months.

The petitioner also relied on a judgment being registered as Civil Appeal no. 547/2020. The aforesaid judgment is with regard to the State of Manipur. The facts of the aforesaid case is that 13 petitions were filed before the Speaker for disqualification of a member of the Manipur Legislative Assembly under paragraph 2(1)(a) of the 10th Schedule of the Constitution of India. In the aforesaid case the disqualification petitions were pending before the Hon'ble Speaker against which writ petitions were filed before Manipur High Court but due to long pendency of the case the aforesaid case was preferred before the Supreme Court. In the aforesaid judgment Supreme Court directed the Speaker to conclude the proceedings of disqualification within 4 weeks from

the date of which the judgment is intimated to him. The aforesaid case is been taken on record and accordingly the matter has been expedited and both the parties were heard on 25.10.2024.

Decision :-

The petitioner's whole case rests on certain statement being made in his petition which is already discussed herein above. The petitioner in his petition itself admits in paragraph 4 that the respondent has neither voluntarily resigned nor been expelled by Indian National Congress. All the statements made in the petition are based on documentary evidence submitted by the petitioner in pendrive. I have perused the pendrive, the pendrive contains some news articles. The raw footage of these aforesaid news articles on the basis of which these allegations are made is never been submitted before me which are the primary evidence. From the news articles itself it appears that the same is subjected to editing. The contents of the news articles cannot be accepted to be the gospel truth. Furthermore, no certificate under 65 B is issued by the person concerned in that view of the matter a member of Legislative Assembly be disqualified on the basis of the such material being produced and as such the petition filed by the petitioner for disqualification of the respondent based on certain statement which have in the form of electronic records and which has been subjected to editing cannot be accepted. Moreover, every political party has its own constitution and ways to deal with indiscipline. In the instant case, the concerned political party itself has not taken enough action as per their constitution against the MLA. As such, it can not be presumed that the party is against the MLA or it might have condemned the action of the MLA.

Thus in the facts and circumstances of the case and in law, I do not find that the Respondent has done any such act, which comes within the purview of the provisions of the Tenth Schedule to the Constitution of India.

Taking into account the aforesaid, I find that the Petitioner has not been able to establish the contentions made in the Petition and the same stands rejected.

Dispur;
Dated the 4th January, 2025

BISWAJIT DAIMARY,
Speaker,
Assam Legislative Assembly.

(By order etc.)

D. PEGU,
Secretary,
Assam Legislative Assembly.